

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SOPHAL CLEMONS
Plaintiff,

v.

**OCCIDENTAL FIRE & CASUALTY
COMPANY OF NORTH CAROLINA**
Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____
JURY DEMANDED

**DEFENDANT OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH
CAROLINA'S NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Occidental Fire & Casualty Company of North Carolina (Occidental), in Cause No. 17-DCV-241874, pending in the 240th District Court, Fort Bend County, Texas, files this Notice of Removal from that court to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and respectfully shows:

I. FACTUAL BACKGROUND

1.1 On or about February 27, 2017, Plaintiff filed her Original Petition in the matter styled *Sophal Clemons v. Occidental Fire & Casualty Company of North Carolina*, in the 240th District Court of Fort Bend County, Texas, in which Plaintiff made a claim for damages to her home under a homeowner's insurance policy.

1.2 Plaintiff served Occidental with process and Plaintiff's Original Petition on May 22, 2017.

1.3 Plaintiff's Original Petition states that she was issued a property insurance policy by the Defendant providing coverage to her property located in Fort Bend County, Texas. *See* Pl.'s Original Pet. at ¶¶ 1 and 7. Plaintiff alleges that this property was damaged as the result of storm on February 17, 2017. *Id.* at ¶ 8. The Plaintiff alleges that she submitted a claim to the Defendant for the alleged damage and Defendant conducted an outcome-oriented investigation of the property resulting in an underpayment of the claim. *Id.* at ¶¶ 10-12.

1.4 The Index of Matters Being Filed is attached as Exhibit A to this notice of removal. A copy of the Fort Bend County District Clerk's file for this case is also attached as Exhibit B and includes true and correct copies of all executed process, pleadings, and orders. The Designation of Counsel is attached as Exhibit C.

II. BASIS FOR REMOVAL

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332, 1441(a) and 1446.

A. Complete diversity exists between Plaintiff and Occidental.

2.2 At the time the lawsuit was filed, Plaintiff was a resident of the State of Texas. *See* Pl.'s Original Pet. at ¶ 1.

2.3 Defendant Occidental is incorporated as a North Carolina-domiciled insurance company, and has its principal place of business in North Carolina. Accordingly, Occidental is not a citizen of Texas.

2.4 Because Plaintiff is a citizen of Texas and Occidental, a foreign defendant, is the only defendant in this action, there is complete diversity between the parties. As

such, removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

B. The amount of damages prayed for by Plaintiff exceeds the amount in controversy required to confer diversity jurisdiction on this Court.

2.5 Federal courts have subject matter jurisdiction over actions between citizens of different states in which the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a)(1); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Generally, an amount in controversy for the purposes of establishing federal jurisdiction is determined by the Plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995).

2.6 In her Petition, Plaintiff expressly states that she "seeks monetary relief over \$100,000, but not more than \$200,000." *See* Pl.'s Original Pet. at ¶ 4.

2.7 Because Plaintiff has prayed for damages in excess of \$75,000, this case may be properly removed to federal court.

III. THE REMOVAL IS PROCEDURALLY CORRECT

3.1 Defendant Occidental was first served with Plaintiff's Original Petition and process on May 22, 2017. Thus, by filing its Notice of Removal and accompanying documents on this date, Occidental files its Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

33 Pursuant to 28 U.S.C. §1446(d), promptly after Occidental files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

34 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Fort Bend County District Court, promptly after Occidental files this Notice.

IV. CONCLUSION

4.1 Based on the foregoing, the exhibits submitted in support of this Notice, and other documents filed contemporaneously with this Notice and fully incorporated herein, Defendant Occidental Fire & Casualty Company of North Carolina hereby removes this case to this Court for trial and determination.

Respectfully submitted,

GAULT, NYE & QUINTANA, L.L.P.
P.O. Box 6666
Corpus Christi, Texas, 78466
Telephone: (361) 654-7008
Fax: (361) 654-7001

By: /s/ Mikell A. West
Mikell A. West
Attorney-in-Charge
State Bar No. 24070832
Southern Dist. No. 1563058
mwest@gnqlawyers.com

**ATTORNEY FOR OCCIDENTAL
FIRE & CASUALTY COMPANY
OF NORTH CAROLINA**

Of counsel:

GAULT, NYE & QUINTANA, L.L.P.
P.O. Box 5959
Brownsville, Texas 78523
Telephone (956) 544-7110
Fax: (956) 544-0607

William Gault
State Bar No. 07765050
Southern Dist. No. 14685
bgault@gnqlawyers.com

GAULT, NYE & QUINTANA, L.L.P.
P.O. Box 6666
Corpus Christi, Texas, 78466
Telephone: (361) 654-7008
Fax: (361) 654-7001

Thomas F. Nye
State Bar No. 15154025
Southern Dist. No. 7952
tnye@gnqlawyers.com

Donald W. Elliott, Jr.
State Bar No. 24097651
Southern Dist. No. 2783040
delliott@gnqlawyers.com

John R. Lamont
State Bar No. 24099876
Southern Dist. No. 3028487
jlamont@gnqlawyers.com

CERTIFICATE OF SERVICE

I, Mikell A. West, certify that on June 20, 2017, a copy of Defendant Occidental Fire & Casualty Company of North Carolina's Notice of Removal was *electronically filed* on the CM/ECF system, and will be served on the following attorney in charge for Plaintiff, Sophal Clemons:

VIA CM/RRR # 7015 1730 0001 4976 7651

Richard D. Daly
James Willis
Daly & Black, P.C.
2211 Norfolk Street, Suite 800
Houston, Texas 77098

By: /s/ Mikell A. West
Mikell A. West